ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE JOHN B. ROBBINS, JUDGE
DIVISION IV

CA 06-876

JERRY D. EDWARDS
APPELLANT

MAY 9, 2007

V.

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
[NO. F109737]

GALLOWAY SAND & GRAVEL and
COMMERCE & INDUSTRY
INSURANCE CO.
APPELLEES

AFFIRMED

Appellant Jerry Don Edwards appeals the denial of benefits for cervical and lumbar injuries that he contends he suffered in the same fall that caused him compensable left wrist, arm, and shoulder injuries. Appellant also appeals the determination of his average weekly wage, which he contends should be based upon a forty-hour-work week ($360), as opposed to his actual average weekly earnings over the course of one year's work ($203.98). The administrative law judge (ALJ), and the Commission on appeal, found that appellant failed to prove a causal connection between his fall at work in August 2001 and the complaints of pain in his neck and low back evidenced in the medical records for the first time many months later in 2002. The ALJ and Commission also determined that his average weekly wage was $203.98. Appellant argues that the Commission and ALJ's findings on these aspects of his claim are not supported by substantial evidence. His employer, appellee Galloway Sand &

Gravel, asserts that the Commission's decision is sound and supported by substantial evidence. We affirm.

This court reviews decisions of the Workers' Compensation Commission to determine whether there is substantial evidence to support it. *Rice v. Georgia-Pacific Corp.*, 72 Ark. App. 149, 35 S.W.3d 328 (2000). Substantial evidence is that relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings. *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). The issue is not whether we might have reached a different decision or whether the evidence would have supported a contrary finding; instead, we affirm if reasonable minds could have reached the conclusion rendered by the Commission. *Sharp County Sheriff's Dep't v. Ozark Acres Improvement Dist.*, 75 Ark. App. 250, 57 S.W.3d 764 (2001). It is the Commission's province to weigh the evidence and determine what is most credible. *Minn. Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999); *Foxx v. American Transp.*, 54 Ark. App. 115, 924 S.W.2d 814 (1996). Where a claim is denied, we affirm if there is a substantial basis upon which the Commission denied relief. *Moncus v. Billingsley Logging & American Ins. Co.*, __ Ark. __, __ S.W.3d __ (May 18, 2006).

With these parameters of review, we examine the evidence presented to the Commission. Appellant, a man in his mid-forties, had worked for appellee in its dredging business for approximately two years when he fell approximately fifteen feet while at work

on a tug boat on August 4, 2001. This fall caused a severe fracture of his left arm and wrist that required surgical repair and external fixation within days of the fall. A Batesville surgeon, Dr. Allen, performed this surgery. This fall also caused a left rotator cuff tear that required surgical repair performed in August 2002, also by Dr. Allen. Treatments and the healing periods for these injuries and complications were ongoing, and the employer accepted these claims as compensable.

In between the aforementioned surgeries, appellant began to make complaints of cervical and lumbar pain to health care providers. Specifically, on June 7, 2002, there is a notation in Dr. Ackerman's medical records that appellant was complaining of "knots" in his low back accompanied by low-back pain. Appellant had been sent to Dr. Ackerman for pain management regarding his left extremity. Dr. Ackerman thought that his back complaints "may be related to a connective tissue disorder." On June 27, 2002, appellant returned to his treating surgeon Dr. Allen, who thought that the present complaints of back pain were related to his work injury and how he mechanically conducted himself with the left extremity issues.

Appellant's first recorded complaint of neck pain was in October 2002, when he was sent to physiatrist Dr. Safman for back pain. Appellant was given trigger-point injections in November 2002 to relieve the pain. Dr. Safman opined that it was "within reason" that his back and neck problems, which Dr. Safman characterized as strains, were caused by the work fall.

Appellant testified that he had suffered from back and neck pain all along since the fall in August 2001, corroborated by his wife's testimony. However, the medical reports did not

bear out that claim, despite several doctors caring for him and making thorough evaluations. Appellant did not deny that he fell off his front porch on December 1, 2002, breaking his left clavicle and several ribs. However, appellant did not believe that injury had anything to do with his neck and back problems, except that his back pain worsened for a while after this fall.

Appellee resisted the claim for further benefits as not causally connected to the compensable fall. The employer also contended that any present cervical and lumbar complaints were caused by appellant falling off his porch at home on December 1, 2002.

Regarding his weekly wage, appellant testified that he had a contract for full-time work, but in actuality, he left work each day when he wished. He said that for the previous two years, he never was given forty hours of work per week. Appellant stated that he made nine dollars per hour.

His employer, via its manager Tommy Osborn, testified that the work dredging sand was seasonal. Osborn testified that he never guaranteed appellant a forty-hour week, and that appellant averaged a little more than twenty hours per week over the course of the year preceding his fall in August 2001. Osborn noted that once the work boat was docked, appellant would often clock out and leave. Osborn verified that the wage records for appellant's work for the year preceding his fall were accurate and reflected his wages, averaging $203.98 per week over the prior fifty-two weeks. His weekly hours ranged from a high of forty on two occasions, down to six hours on two occasions, with extreme variability in between.

The ALJ found that appellant had failed to prove by a preponderance of the evidence that his neck and back problems were causally connected to the fall at work due to the significant lapse in time between the fall and any recorded complaints related to cervical and lumbar pain. This rendered moot any discussion of whether his fall off the porch was an independent intervening cause. The ALJ determined that appellant's average weekly wage was $203.98. Appellant appealed to the Commission, which affirmed and adopted the ALJ's decision in a two-to-one vote of Commissioners. This appeal followed.

The first point on appeal is that there is no substantial evidence to support the conclusion that appellant's neck and back problems are not causally related to his fall at work in August 2001. He asserts that his medical treatment was undoubtedly focused on his severe arm, wrist, and shoulder injuries at the outset, and it was not until later that his medical care turned to the lesser of his injuries. In short, he argues that a preponderance of the evidence demonstrates that his cervical and lumbar complaints are causally connected to his work injury and that there is insubstantial evidence to find to the contrary. We disagree.

In a workers' compensation case, the claimant has the burden of proving by a preponderance of the evidence that his claim is compensable, i.e., that his injury was a result of an accident that arose in the course of his employment, and that it grew out of, or resulted from the employment. *Bates v. Frost Logging Co.*, 38 Ark. App. 36, 827 S.W.2d 664 (1992). He must prove a causal connection between the work-related accident and the later disabling injury. *Id.* It is not essential, however, that the causal relationship between the accident and disability be established by medical evidence. *Gerber Prods. v. McDonald*, 15 Ark. App. 226,

691 S.W.2d 879 (1985). Questions of causation in compensation cases must be answered in light of the facts peculiar to each case and the answer in one is of little aid to an answer in another. *Pace Corp. v. Burns*, 251 Ark. 311, 472 S.W.2d 78 (1971).

It is within the Commission's sole discretion to determine the credibility of each witness and the weight to be given to their testimony. *General Elec. Railcar Repair Servs. v. Hardin*, 62 Ark. App. 120, 969 S.W.2d 667 (1998); *Wade v. Mr. C. Cavenaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989). A party's testimony is never considered uncontroverted. *Lambert v. Gerber Prods. Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985). The Commission may accept or reject medical opinions and determine their medical soundness and probative force. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 695 (1999).

The ALJ was not persuaded that appellant suffered back and neck problems as a result of the fall in August 2001, particularly where the extensive medical records did not support that he had continually made those kinds of complaints. While we may not have decided as the Commission did, we are required to give the Commission certain enumerated deferences in weighing the evidence. We affirm this point because there is a substantial basis for the denial of relief.

Appellant also argues that the ALJ's finding his average weekly wage to be $203.98 is not supported by substantial evidence. He argues that the relevant statute, Ark. Code Ann. § 11-9-518, should be construed to mean that he was expected to be available for a forty-hour work week such that his average wages must be determined on that basis. We disagree.

Arkansas Code Annotated section 11-9-518 states:

> (a)(1) Compensation shall be computed on the average weekly wage earned by the employee under the contract of hire in force at the time of the accident and in no case shall be computed on less than a full-time workweek in the employment.
> (2) Where the injured employee was working on a piece basis, the average weekly wage shall be determined by dividing the earnings of the employee by the number of hours required to earn the wages during the period not to exceed fifty-two (52) weeks preceding the week in which the accident occurred and by multiplying this hourly wage by the number of hours in a full-time workweek in the employment.
> (b) Overtime earnings are to be added to the regular weekly wages and shall be computed by dividing the overtime earnings by the number of weeks worked by the employee in the same employment under the contract of hire in force at the time of the accident, not to exceed a period of fifty-two (52) weeks preceding the accident.
> (c) If, because of exceptional circumstances, the average weekly wage cannot be fairly and justly determined by the above formulas, the Commission may determine the average weekly wage by a method that is just and fair to all parties concerned.

This case showed substantial evidence that appellant was not promised a forty-hour work week, but rather worked part-time and averaged approximately twenty hours per week.

In *Ryan v. Napa*, 266 Ark. 802, 586 S.W.2d 6 (Ark. App. 1979), we held that there was substantial evidence to support the Commission's finding that Ryan's average weekly wages should be computed on the basis of a normal part-time work schedule of twenty hours per week, plus overtime actually worked. Had our appellant proven by a preponderance that he in fact was promised a forty-hour work week, despite the seasonal nature of the work, then his argument would be well-taken that the average wages should be computed on that forty-hour week. *Compare Gill v. Ozark Forest Prods.*, 255 Ark. 951, 504 S.W.2d 357(1974). An employee's wage should be computed so that it will result in a compensation award that pays the employee during his period of disability what he is accustomed to earning in his usual or normal year around activity. *See, e.g., Farm Air Corp. v. Reader*, 11 Ark. App. 72, 666 S.W.2d

717 (1984). The ALJ found that appellant was not a full-time employee, that his fifty-two-week work history averaged into a weekly wage of $203.98, and there is substantial evidence to support that finding. Therefore, we affirm the ALJ's application of the relevant statute to the facts at hand.

In summary, we affirm the Commission's decision to deny this claim for benefits related to neck and back problems. We also affirm the finding of appellant's average weekly wage.

HART and GLADWIN, JJ., agree.